

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 99-0468**  
**Corporate Income Tax**  
**For the Years 1990-1995**

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**ISSUE**

**I. Gross Income Tax—Calculation of Sales Receipts**

**Authority:** IC 6-8.1-5-1(b) ; IC 6-8.1-5-1(a); IC 6-2.1-1-2; IC 6-2.1-1-11;  
IC 6-2.1-1-13; IC 6-2.1-2-2; IC 6-2.1-3-3.

Taxpayer protests the calculation of Indiana sales receipts.

**STATEMENT OF FACTS**

Taxpayer is a wholly-owned domestic subsidiary of a foreign parent company located outside the United States. Taxpayer is a general trading company whose business is to import and export goods and services among countries around the world. One enterprise operated by Taxpayer is the sale of consumer batteries in the United States and Canada. To facilitate the sale of its batteries, Taxpayer has entered into a consignment agreement with Consignee. Consignee is responsible for the distribution and marketing of the consumer batteries.

Taxpayer purchases batteries from manufacturers in Hong Kong, Korea, and Taiwan; pays the manufacturers; arranges for export, transit, customs clearance, and initial delivery to Consignee. Taxpayer owns warehouses in the United States and Canada. One of the warehouses is located in Indiana. Consignee uses Taxpayer's warehouses to store and distribute the batteries. Batteries purchased in Hong Kong are delivered to the Indiana warehouse. Batteries purchased in Korea and Taiwan are delivered to Taxpayer's facility in California for packaging.

All delivered batteries are received into Consignee's Inventory Control System for tracking. Consignee is required to submit to Taxpayer various reports tracking inventory, sales, and returns of product. Taxpayer retains title to the batteries until Consignee disposes the inventory—through sales, returns, damage, or loss. Taxpayer records all deliveries of inventory to Consignee as having occurred in Indiana—despite the fact that inventories were delivered to various warehouses throughout the United States and Canada. Consignee is responsible for tracking the ultimate disposal of inventory; all Taxpayer tracks is the delivery of the inventories into the hands of Consignee for marketing and sale.

The Department did an assessment based on the best information available—a BIA assessment. The parties dispute the amount of sales subject to Indiana Gross Income tax. Taxpayer believes that the Department has overstated Taxpayer's Indiana sales. The Department had assessed gross income tax on a proportion of the inventory actually held by the Consignee in the Indiana warehouse. Taxpayer contended that despite the fact that it records all inventories as passing into Consignee's control in Indiana, only a portion of the inventory is disposed in Indiana—making the Gross Income Tax calculation less than all the inventory held by Consignee.

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**DISCUSSION**

All tax assessments are presumed to be accurate; the taxpayer bears the burden of proving that an assessment is incorrect. IC 6-8.1-5-1(b). IC 6-8.1-5-1(a) permits the Department to make an assessment of taxes based on the best information available. Taxpayer stated at the hearing that documents from nearly 10 years ago related to the sales from it to Consignee have been difficult to obtain, explaining that for its purposes, Taxpayer does not track the domestic movement of the goods; the recording of all inventory passing into the control of Consignee in Indiana is convenient because it allows Taxpayer to record the gross transfer of inventory. The details of distribution are the concern of Consignee. Taxpayer further explained that because title to the goods does not pass from Taxpayer to the customer until sold, the breakout report of sales is the most indicative of its gross income in Indiana.

The gross income tax, which has been repealed, defined gross income as all gross receipts a taxpayer receives. *See* IC 6-2.1-1-2 [repealed]. IC 6-2.1-1-11 [repealed] defined "receives" to mean the possession of income and the payment of a taxpayer's expense. IC 6-2.1-1-13 [repealed], defined "taxable gross income" as the remainder of income after exemptions and deductions. IC 6-2.1-2-2 [repealed] imposed the gross income tax on the entire gross income of a taxpayer who is a resident or domiciliary of Indiana and the taxable gross income derived from activities, businesses, or any other sources within Indiana by a taxpayer who is not a resident or domiciliary of Indiana.

Taxpayer does not contend it owes no gross income tax; the issue is how much it owes. IC 6-2.1-3-3 [repealed] exempted from taxation, income derived from business conducted in interstate commerce. Given that Taxpayer owned warehouses across the United States and Canada, and given that Taxpayer held title of the goods until it was sold to the end consumer, Taxpayer is liable for sales made in Indiana. The issue arises as to the reliability of Taxpayer's documentation of those sales.

Taxpayer conceded that Consignee maintained the documentation of transfers of inventory between the warehouses and the documentation of sales. Because IC 6-8.1-5-1(b) presumes that the Department's assessment is accurate, Taxpayer has the burden to show the inaccuracies of that assessment. Taxpayer stated at the hearing that Consignee maintained a breakout report of the sales made in the different states. At the hearing, Taxpayer presented to the Department a listing of states in which income tax returns were filed and next to the state name was a percent—representing the percentage of national sales made in that state. The worksheet did not

list all states in the United States. Only a percentage of sales for each of those states was listed; no supporting documentation to demonstrate how the percentages were calculated was provided to the Department. The worksheet stated that the average percentage of overall sales made to Indiana customers for 1993, 1994, 1995, and 1996 was 3.178%. That average was calculated by Taxpayer from these yearly representations of sales in Indiana: 1993, 3.265%; 1994, 3.394%; 1995, 3.092%; and 1996, 2.959%. Taxpayer states that it had problems receiving records from Consignee to document 1990, 1991, and 1992. The information presented by Taxpayer to the Department has been considered but the Department does not find the evidence to be reliable and credible—because the percentages are mere statements not supported by documents to substantiate the calculations.

The Department did an assessment based on best information available. The audit report calculated an estimated annual turnover of inventory of 3.5 times. Taxpayer agreed at the hearing to the calculation. The audit report calculated estimated sales subject to gross income tax of \$7,733,313 for 1993; \$6,466,194 for 1994; and \$6,058,574 for 1995. Taxpayer agreed at the hearing to those calculations. The assessments were based on the total sales made to Consignee and the breakout percentage of sales made to Indiana customers; the assessment amounts are supported. Taxpayer has not provided credible evidence to rebut the assessment amounts.

### **FINDING**

For the reasons discussed above, Taxpayer's protest is denied.

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